

**Please cancel claims 6 - 13 without prejudice.**

### **REMARKS**

Applicants acknowledge the Examiner's comment regarding the election of the invention but wish to add for reconsideration that the device of the elected claims is formed by the process of the non-elected claims.

The Examiner has rejected claims 1-5 under 35 U.S.C. 103(a) as being unpatentable under Su et al. in view of Cho et al. Neither Su et al. nor Cho et al. teach that the anti-reflective coating that forms the spacer structure serves a dual purpose, namely as a sacrificial patterning structure function and the formation of the spacer structure. Applicants request reconsideration of the rejection to claims 1-5 to factor this aspect of the anti-reflective material of the present invention.

Claims 14-21 are herein added to better encompass the full scope and breadth of the present invention, notwithstanding the Applicants' belief that the claims would have been allowable as originally filed.

Independent Claims 14, 17, 19 and 21 are herein added to better describe that the anti-reflective coating material is dual purpose for forming a lithographic patterning structure and for forming the spacer structures for protecting the stacked gate structures during etching operations. Dependent claims 15, 16, 18 and 20 are herein added to add limitations consistent with the limitations of dependent claims 2, 3 and 5. In particular, applicants wish to draw the Examiner's attention to the range of thickness of the anti-reflective material in that it extends to a lower range which is not taught, nor suggested by the cited patents.

Accordingly, the Applicants respectfully assert that no claims have been narrowed within the meaning of *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.* (Fed.Cir. November 29, 2000). Thus, favorable consideration of the present application is respectfully requested in light of the foregoing amendment and these remarks.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Victor Flores', with a stylized flourish at the end.

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